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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,965	07/10/2006	Baoning Zong	13598/I	4197
26646 7590 06/26/2009 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER				
WOOD, ELIZABETH D				
ART UNIT		PAPER NUMBER		
1793				
MAIL DATE		DELIVERY MODE		
06/26/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/562,965

Applicant(s)

ZONG ET AL.

Examiner

Elizabeth D. Wood

Art Unit

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 39, 41-51, 65 and 67-78 is/are pending in the application.
- 4a) Of the above claim(s) 65 and 67-77 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 39, 41, 42 and 46-51 is/are rejected.
- 7) ☒ Claim(s) 43-45 and 78 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 16, 2009 has been entered.

Election/Restriction

Claims 65 and 67-77 remain withdrawn from consideration as being directed to a non-elected invention. Applicant continues to assert that no restriction has been applied, however the office action mailed March 28, 2008 specifically indicated that the amended claims were directed to an independent and distinct invention and presented reasons for the restriction thereof (pages 2-3), concluding that applicant has already had an action on the merits for the invention effectively elected by original presentation. This was a clear and proper restriction. Accordingly, claims 65 and 67-77 remain withdrawn from consideration.

Claim Rejections - 35 USC § 112

The rejection of claims 39 and 41-51 under the second paragraph of 35 USC 112 is withdrawn in view of the amendment of April 16, 2009.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 39, 41, 42, 46-51 remain rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,814,316 to Pellet et al. for the reasons set forth in the office action of March 28, 2008.

Response to Arguments

Applicant's arguments filed April 16, 2009 have been fully considered but they are not persuasive.

Applicant's arguments continue to recite that the examiner's "conclusory statements" provide no motivation to combine. However, there is no combination in this rejection. The Pellet et al. disclosure contains many other embodiments outside the scope of the instant claims, but the fact remains that they disclose materials indistinguishable from the molecular sieves in the rejected claims. These molecular sieves can contain vanadium and Pellet indicates them to be part of the framework. The reference further teaches the combination of these materials with binders and other zeolites in an FCC catalyst. Accordingly, any benefits obtained by applicant such as the concomitant removal of sulfur would naturally flow from this reference disclosure, and they need not suggest the "sole use of vanadium" for the reasons specified by applicant.. Applicant asserts that the patented composition is physically/chemically different from that in the instant claims and the examiner must provide a reason that would prompt one to change the composition to a multiple component mixture. However, applicant's claims in no way exclude any physical or chemical differences, and would encompass any composition containing all of the recited components.

Allowable Subject Matter

Claim 78 is objected to as it appears that the last line should recite "VSAPO-n". It is also objected to as being a substantial duplicate of claim 43 as there appears no difference in scope between these two claims.

Claims 43-45 are objected to as being dependent on a rejected base claim, but would be allowable if rewritten to include all of the limitations of the independent claim.

Conclusion

Applicants are advised that any evidence to be provided under 37 CFR 1.131 or 1.132 and any amendments to the claims and specification should be submitted prior to final rejection to be considered timely. It is anticipated that the next office action will be a final rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth D. Wood whose telephone number is 571-272-1377. The examiner can normally be reached on M-F, 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth D. Wood/
Primary Examiner, Art Unit 1793

/E. D. W./
Primary Examiner, Art Unit 1793